

General Comments

Several commenters noted that the rule is an improvement over the current rule, or that the regulated community was properly included in the process. Most commenters express the opinion that the rule should be adopted despite any flaws. (Dave Wallace, Utah State University; Eldon Romney, R&R Environmental; Salt Lake School District, Steve Bennett; Russell D. Baker, Thermal West Industrial; Merlynn Densley, IHI Environmental)

Several commenters felt that the rule is too burdensome, that it improperly exceeds comparable federal standards, that the federal standards themselves are excessive, and/or that it is not scientifically justified as a protection of human health or the environment. Furthermore, some of these commenters argue that this rule violates Utah Code 19-4-106 by making rules that are more stringent than the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) for asbestos, and one commenter feels that the rules need to be taken back to committee and rewritten. (Danny L. Dever, Cache School District; Dave Wallace, Utah State University; Eldon Romney, R&R Environmental; Phil Lott, Provo School District).

Response: We do not feel that the rule goes beyond what is reasonable. Numerous meetings with the regulated public resulted in numerous compromises between widely divergent viewpoints. The proposed rule should be implemented, as it represents a significant improvement over the current asbestos rule. The justification for this rule lies in the prevention of unnecessary exposure to airborne asbestos fibers that would otherwise be released as a result of demolition and renovation activities. We will continue to work with the regulated public to ensure that the rules are no more stringent than necessary to protect public health and the environment and to implement our statutory mandate.

19-2-106 addresses rules made for the purpose of administering a Clean Air Act (CAA) program. It prohibits such rules from being more stringent than the corresponding federal regulations which address the same circumstances. The NESHAP for asbestos has been adopted by reference into Utah's regulations. R307-801 does not administer the NESHAP; rather, it implements 19-2-104(3), and applies to different circumstances than the NESHAP covers. Furthermore, certification requirements and AHERA originate from the federal Toxic Substances Control Act (TSCA Title II), which is not a part of the Clean Air Act, but which the state Air Conservation Act requires DAQ to implement. Therefore, 19-2-106 does not apply to this rulemaking.

One commenter stated that the rule needs to be examined and modified on a regular basis to keep it current and viable. (Danny Devers, Cache School District)

1 Response: We plan to review the rules regularly to make sure that they stay current and that
2 they continue to serve the needs of human health and the environment without placing an
3 unnecessary burden on the regulated community.
4

5 One commenter felt that the rule needs a provision that NOV's will be written and resolved within 30
6 days (Russell Baker, Thermal West Industrial)
7

8 Response: We agree that the timetable for the issuance and resolution of NOV's is important,
9 and we will continue to strive to improve the time frames in which compliance actions are
10 initiated and completed. However, this subject is beyond the scope of the asbestos rule.
11

12 Specific Comments 13

14 801-3 [definitions]: One commenter notes that numerous definitions which are found in the federal
15 NESHAP have not been included and this commenter expresses concern that the lack of these
16 definitions may compromise enforcement of the federal regulations (Ron Rutherford, EPA)
17

18 Response: The entire asbestos NESHAP has been adopted by reference in a separate rule,
19 thus, any definitions found in the NESHAP are enforceable through that rule. In addition,
20 definitions in R307-101 apply to all R307 rules. The definitions included in R307-801 are
21 strictly those that are used in this rule.
22

23 801-3 ["adequately wet"]: One commmenter feels that the definition for the term "Adequately Wet"
24 contains too much explanation (Danny Devers, Cache School District)
25

26 Response: In order to maintain clarity the definition for adequately wet is precisely the
27 definition given in the asbestos NESHAP. We agree that this definition is not the most succinct
28 or best worded definition that could be generated, but we do not feel justified in creating a
29 definition that differs from the NESHAP definition.
30

31 801-3 ["Asbestos Containing Material (ACM)"]: Two commenters feel that, in the definition for
32 "Asbestos Containing Material (ACM)" the word "must" should not be used. One of these commenters
33 believes that the requirement to use point counting to determine if a material is asbestos containing when
34 visual estimation results in a concentration of less than 10% asbestos is optional under the federal
35 NESHAP regulations (Danny Devers, Cache School District; Eldon Romney, R&R Environmental)
36

37 Response: This definition is consistent with the EPA definition. Our policy has been like the
38 federal policy since the definition is similar. In general, if you assume that a material is ACM,
39 and treat it as such, then no sampling is required. Therefore, the current wording means that if
40 the visual estimation using polarized light microscopy results in more than a "trace" of asbestos

1 and less than 10%, then it is necessary to use point counting to verify that the material is not an
2 asbestos-containing material. Since sampling is not required to assume that a material does
3 contain asbestos, it follows that point counting does not need to be performed either, as long as
4 the material is assumed to contain asbestos. If you wish to determine that the material is not an
5 asbestos-containing material, then you must use the point counting method.

6
7 801-3 [“Asbestos Survey”]: One commenter noted that the correct citation in the definition for
8 “Asbestos Survey” is “R307-801-10(6)” (Eldon Romney, R&R Environmental)

9
10 Response: This has been corrected.

11
12 801-3 [“Asbestos Waste”]: One commenter noted that, in the definition for “Asbestos Waste”, no
13 concentration was specified. The commenter asks if the lack of any specified concentration of asbestos
14 in asbestos waste allows materials that contain only traces of asbestos to be considered asbestos waste.
15 (Eldon Romney, R&R Environmental)

16
17 Response: This definition is consistent with the federal definition; we have now deleted the
18 reference to “mill tailings” because this rule does not apply to such wastes. Since the rule applies
19 to demolition and renovation work only, the definition is applied only in those circumstances.
20 The reason that no lower limit on asbestos content is included in the rule is that parts of the
21 enclosure structure as well as disposable clothing and other contaminated materials are
22 asbestos waste, even if no asbestos can be detected.

23
24 801-3 [Friable Asbestos-Containing Material (Friable ACM)]: One commenter wants the Federal
25 NESHAP wording for the definition of “Friable Asbestos-Containing Material (Friable ACM)” this
26 wording is: “...any asbestos-containing material that, when dry, can be crumbled...” (Eldon Romney,
27 R&R Environmental)

28
29 Response: We will use the NESHAP definition

30
31 801-3 [“Inaccessible”]: One commenter asks if the definition for “Inaccessible” should include materials
32 in “restricted” or “occluded” areas rather than or in addition to the current wording “covered”(Eldon
33 Romney, R&R Environmental)

34
35 Response: We agree. We have included wording similar to the suggested wording.

36
37 801-3 [“TSCA Accreditation”]: One commenter noted that term "TSCA Accreditation" should be
38 replaced by the term "TSCA Certification" and also noted that the terms are used in rule in the reverse
39 of common usage: “a person or firm is certified to do asbestos related functions” and “a training facility
40 is accredited to provide specified asbestos training,” but this is not the usage in R307-801. (Ron
41 Rutherford, EPA)

1 Response: The proposed rule is consistent with the federal regulations (e.g. 763 subpart E
2 appendix C I C states “. . . accredited persons . . .” Also, our state Statute (3s) says “. .
3 .accredited persons . . .”) We agree that such usage is reverse of the common accepted usage
4 for these terms, but to change this terminology at the level of state regulations would create
5 even more confusion. Therefore, for the purposes of R307-801, we will retain the usage that
6 persons are “accredited.”
7

8 801-6 (1) [Requirements for persons seeking certification] One commenter wanted some asbestos
9 experience to be required for certification in the consultant fields. (Ron Rutherford, EPA)
10

11 Response: While there is a suggested experience requirement in the MAP, it is optional. In
12 meeting with regulated public we discussed a wide variety of possible experience requirements,
13 but each of these ideas was rejected. Therefore we have only included the minimum
14 requirements of individual certification for the MAP.
15

16 801-6 (2)(a) [certification remains in effect until TSCA accreditation expires] One commenter
17 expresses concern that using the expiration of the TSCA accreditation in a particular asbestos discipline
18 as the expiration date for the state certification in that discipline will conflict with plans to issue one card
19 that lists all of a person’s certified disciplines when each separate accreditation will probably have a
20 different expiration date. (Eldon Romney, R&R Environmental)
21

22 Response: This comment is beyond the scope of the rule. DAQ is considering a number of
23 different solutions to this issue and this comment will be considered in arriving at a solution.
24

25 801-6(2)(b)(ii) [Submit certificate of TSCA accreditation]. One commenter suggests alternate wording:
26 "Have submitted..." instead of “submit” because the current wording would require that all certificates of
27 training be submitted every time the State asbestos certification is renewed. (Eldon Romney, R&R
28 Environmental)
29

30 Response: We agree that it would be inappropriate to require to have a person submit all
31 certificates even though they had already been submitted. However, the rule states that the
32 applicant needs to submit the certificate for “initial **or** refresher training.” The presence of the
33 word “or” indicates that a choice can be made, and that either an initial or a refresher training
34 certificate may be submitted. We will add the word “current” to show that the certificate needs
35 to be current.
36

37 801-8 [Approval of Training Courses] One commenter feels that some training course requirements are
38 excessive. These are 801-1(2) the requirement to provide detailed information on persons who attend
39 the course and the requirements to provide 10-day notice of any scheduled courses or of any changes
40 in course instructors. (Dave Wallace, Utah State University)
41

1 Response: The detailed information, including a list of attendees and their SSA numbers is
2 required by the MAP. The notification is also required by the MAP. The ten day notice is
3 necessary so that DAQ can do audits and provide approval letters for instructors as required
4 by the MAP. See Appendix C, I F2
5

6 801-9 [Requirement to inspect] One commenter noted that there is no “trigger” amount of asbestos
7 which indicates that an inspection is necessary. The commenter feels that the requirement that every
8 asbestos removal or cleanup include an inspection report, especially in a large facility, is burdensome.
9 The commenter adds that in his facility all insulating materials are treated as asbestos-containing
10 materials. (Lowell White, Geneva Steel)
11

12 Response: Because the inspection is used to determine how much asbestos-containing material
13 is likely to be disturbed at a particular site, it is not desirable to make any certain amount of
14 asbestos a “trigger” for inspection procedures and reports. The state rules apply only if there is
15 public access, a school building subject to AHERA is involved, or the demolition or renovation
16 activity is contracted for hire (by an outside contractor). The requirement applies to any
17 renovation or demolition activity that is covered by state rules. The survey must at least cover
18 the affected area, and may include any fraction of the facility, including the entire facility if
19 desired. Thus, the same survey may be used for all jobs in a facility—the same way that a school
20 management plan is used. Furthermore, for the cleanup of loose debris, only the debris itself
21 needs to be listed in the survey report, since the cleanup does not disturb any other materials.
22 The survey must list all suspect materials, but asbestos content may be assumed in any case as
23 long as the material is treated as an asbestos-containing material. As with work practices,
24 R307-801-2 (3) allows alternative procedures with DAQ approval.
25

26 801-10 [Inspection procedure] Three commenters stated concerns that the rules on asbestos inspection
27 procedures (801-10), while being within accepted practices, are “over-specified.” One commenter
28 stated that the TSCA inspection procedures are not suited to renovation or demolition activities and will
29 cause costs to rise significantly (Dave Wallace, Utah State University; Eldon Romney, R&R
30 Environmental; Phil Lott, Provo School District).
31

32 Response: We agree that an overly restrictive inspection procedure may cause problems, and
33 we have changed the rule slightly: Any method approved by the executive secretary would be
34 allowable. The survey requirement applies to any renovation or demolition activity. The survey
35 must cover the affected area, the survey must list all suspect materials. Asbestos content may
36 be assumed. As with work practices, R307-801-2 (3) allows alternative procedures with
37 DAQ approval.
38

39 801-10(3) [Identify suspect ACM]: One commenter asks for a clarification of the term ‘suspect ACM
40 building material. The commenter asks if the division will supply a list or if the judgement of the

1 inspector will be accepted. The commenter also asks if any materials will be exempted. (Eldon
2 Romney, R&R Environmental)

3
4 Response: This is a procedural question. We will start with the AHERA list of suspect
5 asbestos containing building materials and make determinations as individual cases arise.
6 Clearly there are some materials that need not be considered suspect, and there are others that
7 should be considered suspect.
8

9 801-10(4) [sampling method] One commenter points out that referring to AHERA is not appropriate in
10 the context of demolition or renovation, because AHERA exempts too many materials (Eldon Romney,
11 R&R Environmental)

12
13 Response: This rule has been changed to read “Follow a sampling method approved by the
14 executive secretary . . .” Note that the intent of this particular subparagraph is to establish a
15 sampling protocol only; this does not address identification of suspect ACM which is covered in
16 801-10(3).
17

18 801-10(6) [information and order of inclusion in survey]: One commenter asserts that it is extremely
19 unreasonable and burdensome to require that all surveys contain information in a particular order. The
20 commenter concludes that this will render older surveys unusable simply because they were not ordered
21 the correct way, which would require redoing a lot of surveys. (Eldon Romney, R&R Environmental)

22
23 Response: While we understand the problem raised here, the format and content of the
24 asbestos survey addresses a longstanding problem regarding completeness, readability and
25 coherence of asbestos survey reports. The uniformity of surveys will help building owners in
26 particular, who may pay for a survey that will be used in the future. Furthermore, the survey
27 report will be in a form that occupies no more than a few pages which can be filled out based
28 on a previously existing survey report, if that report contains adequate information. Because of
29 the uniformity, we feel that a survey format will actually decrease the burden on building owners
30 and consultants alike. However, in response to this comment, a few changes have been made to
31 the wording of the rule. All surveys conducted after this rule goes into effect will be subject to
32 this requirement.
33

34 801-10(7) [inclusion of floor plans and architectural drawings]: One commenter is confused by the use
35 of the words “may” and “must,” which seem contradictory (Eldon Romney, R&R Environmental)

36
37 Response: Our intent is to state that architectural drawings may be used, but if they are
38 referred to, they must also be included in the “official” survey report. In order to clarify this we
39 have changed the rule slightly.
40

1 801-11(1)(b), (2)(b) [Notification and Asbestos Removal Requirements] Three commenters note that
2 the regulation of amounts of ACM down to SSSD amounts is considerably more restrictive than the
3 NESHAP. Some commenters add that the state is unable to inspect those projects which are currently
4 notified, therefore it is not warranted to add even more notifications (Dave Wallace, Utah State
5 University; Eldon Romney, R&R Environmental; Phil Lott, Provo School District)

6
7 Response: DAQ has had rules that regulate this size of project, and the notification is the
8 mechanism to enforce those rules. We feel that control of smaller less-than-NESHAP-sized
9 projects does protect the public health, especially when those projects are conducted in
10 residential homes. Though we cannot inspect every asbestos job, notification of less-than-
11 NESHAP sized projects does allow us to see these projects on a random basis.

12
13 801-11(1)(b), (2)(b) Another commenter is specifically concerned about the 24 hour notification
14 requirement on projects down to SSSD amounts. This commenter points out that in school facilities
15 there are many instances of breakdowns in the heating systems that must be repaired immediately to
16 continue operation of the school. These repairs frequently involve the removal an ACM-muddled elbow
17 or fitting, or the replacement of an ACM-covered valve. The commenter argues that the 24 hour
18 notification will delay these critical projects. (Steve Bennett, Salt Lake School District)

19
20 Response: The vast majority of the cases as described would fall under the SSSD limit, or, if
21 many such projects are performed in a year, an annual notification would cover all. In addition,
22 if such projects are emergencies, they will be handled under emergency notification procedure
23 (R307-801-11(2)(c)(i), which requires no waiting period.

24
25 801-11(2)(a), (b), (c) [removal of RACM before rendering it inaccessible]: One commenter states that
26 the use of the term ‘or rendered inaccessible’ is unclear. The commenter asks if this forbids a person
27 from building an enclosure around RACM even if it is not disturbed. What was the intent? (R&R
28 Environmental, Eldon Romney)

29
30 Response: You may not build an enclosure around RACM unless you label it; otherwise, you
31 have rendered the RACM inaccessible. A labeled enclosure is allowed

32
33 801-11(2)(d) [submittal of annual notification]: One commenter points out that the NESHAP requires
34 notification under these circumstances, and suggests the use of “shall” instead of “may”. (R&R
35 Environmental, Eldon Romney)

36
37 Response: We agree, this is a requirement under the NESHAP and the use of the word “may”
38 would lead to confusion about this requirement. The word “shall” has been substituted for the
39 word “may” in this line.

1 801-12(3) [use of facsimile] One commenter points out that, while the use of facsimile or electronic
2 document transmission can be efficient and effective, there should be a requirement to assure receipt by
3 DAQ before any asbestos projects are commenced. (Ron Rutherford, EPA)
4

5 Response: E-mail and fax notification will only be acceptable for non-NESHAP projects.
6 NESHAP notifications will be handled according to the current NESHAP policy. Division
7 policy is to provide a written acceptance of notifications, and this policy will be extended to
8 email and faxed notifications.
9

10 801-13(1) [supervisor must be on site]: One commenter wonders what the meaning of the term "...on
11 site during all phases..." is. The commenter does not feel that the wording is clear and feels that it may
12 be interpreted to mean that the supervisor would be required to be on site during non-working hours.
13 (Eldon Romney, R&R Environmental)
14

15 Response: The intent of this rule is that the supervisor be present while others work, not during
16 off hours. We have made some changes in the rule to better reflect this intent.
17

18 801-13(2) [workers or supervisors required to handle greater than SSSD amounts]: One commenter
19 asks if we are exempting all requirements for SSSD workers. (Eldon Romney, R&R Environmental)
20

21 Response: That is correct. R307-801 does not regulate work practices for SSSD amounts of
22 RACM.
23

24 R307-801-14. [Asbestos Work Practices]: One commenter states that this rule specifies a degree of
25 detail not found in any Federal regulation. As an example the commenter cites several specific
26 dimensions for various components (3 ft. chambers, 6 ft. drop cloths, 6 inch clearances, etc.). The
27 commenter interprets, for example, that if a 6 foot drop cloth is required, then the worker who extends
28 a drop cloth 5 ft. 11 in would in violation. The commenter suggests that these work practices should be
29 "performance" based. (Dave Wallace, Utah state University)
30

31 Response: The pros and cons of performance-based requirements and definitive limit standards
32 were discussed extensively with the regulated community and the overwhelming consensus was
33 that the regulated community prefers definitive limits. In any case, the division policy is to
34 measure using only the number of significant digits given in the regulation. Thus, a dimension
35 specified in the regulations in feet would be measured and rounded to the nearest foot; in this
36 case, any measurement above 5 feet 6 inches would be considered to meet the 6 foot minimum
37 requirement.
38

39 R307-801-14 (4)(a) [negative pressure need not be maintained]. One commenter expresses the
40 opinion that this statement is unnecessary. The commenter asks how one would create negative

1 pressure in an outdoor asbestos project unless an enclosure was made. The commenter feels that the
2 statement diminishes the credibility of the rules. (Cache School District, Danny Devers)

3
4 Response: The proposed rule language is a clarification. We do not feel that it diminishes the
5 credibility of the whole rule
6

7 801-14(1)(d) [avoid dropping ACM]: One commenter asks what it means to "avoid dropping RACM
8 to the ground", and suggests the NESHAP wording (section 61.145(c)(6)(ii)) 'Carefully lower the
9 material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing
10 the material.' (Eldon Romney, R&R Environmental)

11
12 Response: We agree. The line has been dropped.
13

14 801-14(1)(e) [remove RACM promptly] Two commenters have concerns about the line 'ensure that
15 all RACM is cleared from the floor at the end of each shift' They feel that this is not strict enough and
16 might lead to safety hazards (Eldon Romney, R&R Environmental; Ron Rutherford, EPA)

17
18 Response: We have eliminated this paragraph. It was redundant and duplicated the previous
19 line. Furthermore, the word *immediately* in R307-801(1)(d) has been changed to *promptly*.
20

21 801-14(1)(j) [clean work area]: One commenter states that a requirement to clean drop cloths suggests
22 that drop cloths may be reused. The commenter further states that reusing drop cloths is not a desirable
23 asbestos work practice. (Eldon Romney, R&R Environmental)

24
25 Response: This cleanup is intended to occur before disposal of drop-cloths and other
26 materials. The statement is not intended to condone the reuse of drop cloths This will not be
27 changed.
28

29 801-14(2)(b) [site preparation]: One commenter states that this sentence makes no sense. The
30 commenter goes on to say that if a project is less than the SSSD, it does not need a notification, so
31 referring to a notification makes no sense (R&R Environmental, Eldon Romney)

32
33 Response: The requirement only applies to NESHAP-sized projects, and allows the site to be
34 cleaned up before the ten-day waiting period is over if there is less than an SSSD amount of
35 "loose visible RACM debris".
36

37 801-14(2)(f)(ii) [wall sheeting] One commenter suggests replacing "without locating seams in wall or
38 floor corners" with "ensuring seams are at least two feet from corners of walls or floors" (Eldon
39 Romney, R&R Environmental)
40

1 Response: This would not be better than the current wording, so no change will be made. The
2 rule is clear enough and further specification will not improve compliance.
3

4 801-14(2)(f)(v) [exemption from requirement for polyethylene sheeting on walls]: One commenter
5 suggests that after "removed," the phrase "as part of the asbestos project" be added (Eldon Romney,
6 R&R Environmental)
7

8 Response: We agree; the phrase will be added.
9

10 801-14(2)(j) [maintain negative pressure]: One commenter pointed out a document entitled
11 "Memorandum of Understanding: Application of Construction and General Industry Asbestos
12 Standards to ANSI Member Companies", an agreement between OSHA and the American Iron and
13 Steel Institute. This Memorandum addresses the impossibility and economic unfeasibility of
14 maintaining continuous negative air pressure in a containment at abatement sites at large integrated steel
15 mills. The commenter requests relief from this requirement. (Lowell White, Geneva Steel).
16

17 Response: These rules only apply to persons who contract for hire, perform projects in public
18 places or in schools. Furthermore, under R307-801-2 (3) the owner or operator may request
19 approval for alternative work practices.
20

21 801-14(2)(j)(iii) [negative pressure requirement]: One commenter suggests that OSHA wording be
22 used in this line: "a minimum of -0.02 column inches of water pressure differential. relative to outside
23 pressure". (Eldon Romney, R&R Environmental)
24

25 Response: We agree. The rule has been revised to reflect the comment.
26

27 801-14(5)(d)(ii) [path from work area to remote decontamination]: One commenter suggests the word
28 "sheeting" be added between the words "polyethylene" and "shall" (Eldon Romney R&R
29 Environmental).
30

31 Response: We agree; the change has been made.
32

33 801-15(3) [requirement to label waste containers]: One commenter provides an example wherein
34 asbestos waste does not leave the facility, but is buried in a company landfill. The commenter asks if the
35 labeling requirement would apply in that case. (Lowell White, Geneva Steel).
36

37 Response: This is a NESHAP requirement, therefore, we cannot waive the labeling of asbestos
38 waste if the NESHAP applies.
39
40